



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MURs 5824 & 5825

Pennsylvania Democratic State Committee and
Ann Bursis, in her official capacity as Treasurer;
Lois Murphy for Congress and Katherine A. Rowe,
in her official capacity as Treasurer

STATEMENT OF REASONS
CHAIRMAN ROBERT D. LENHARD
VICE CHAIRMAN DAVID M. MASON
COMMISSIONER ELLEN L. WEINTRAUB

I. INTRODUCTION

This matter concerns allegations that Pennsylvania Democratic State Committee and Ann Bursis, in her official capacity as treasurer ("PDSC"), and Lois Murphy for Congress and Katherine A. Rowe, in her official capacity as treasurer ("Murphy Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"). According to the complaints, the PDSC sent eleven mail pieces during the 2006 election cycle that either supported Lois Murphy's candidacy for United States Congress or criticized her opponent, Jim Gerlach. *See* Complaints and attached exhibits. The complaints allege that the PDSC improperly funded the mailings under the "volunteer activity for party committees" exemption because the mailers were

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1 commercially produced and bore commercially printed labels and commercial postage stamps.
2 The complaints thus claim that they were not distributed in accordance with the volunteer
3 exemption requirements of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and corresponding
4 regulations 11 C.F.R. §§ 100.87 and 100.147. Further, the complaints allege that because the
5 mailers do not satisfy the volunteer exemption, the mailers amounted to a contribution to the
6 ~~Murphy Committee under 2 U.S.C. § 441a or a coordinated party expenditure under § 441a(d)~~
7 and should have been allocated and reported as such. Although the complaints do not state how
8 much was spent on the mailers, they further allege that the PDSC made an excessive contribution
9 to the Murphy Committee.

10 In response, the PDSC contends that the mailers qualified for the “volunteer materials
11 exemption” of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and 11 C.F.R. §§ 100.87, 100.147, and
12 that, therefore, they were not contributions or expenditures under 2 U.S.C. § 441a. In its reply¹,
13 supplemented by the declaration of Mr. Rafner, the president of the direct mail provider who
14 participated in the mailings, the PDSC attests to facts that would satisfy the requirements of the
15 volunteer exemption regulations.

16 In addition, the complaints allege that the PDSC violated the disclaimer requirements of
17 the Act, 2 U.S.C. § 441d and 11 C.F.R. § 110.11(b), by failing to include an “authorized by”
18 statement in the eleven mailers. The PDSC contends that the disclaimer on each of the pieces
19 complied with the disclaimer requirements for exempt mail contained in 11 C.F.R. § 110.11(e),
20 which does not require an “authorized by” statement. As discussed below, the Commission finds
21 that there is no reason to believe that the Respondents violated the Act in these matters.

¹ The Pennsylvania Democratic Party filed a joint response on behalf of the PDSC and the Murphy Committee.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The Act limits the amount that a state party committee may contribute to or spend on
3 behalf of a federal candidate. *See* 2 U.S.C. §§ 441a(a)(2)(A), 441a(d). However, the Act
4 exempts materials distributed “in connection with volunteer activities” from the definition of
5 “contribution” and “expenditure” when such distribution is made by a state political party
6 committee on behalf of a federal candidate of that party. *See* 2 U.S.C. § 431(8)(B)(ix) and
7 (9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147. Under this exemption, campaign materials are
8 not subject to contribution or expenditure limits, and thus a state committee may donate an
9 unlimited amount of qualified materials to a federal candidate.

10 The complaint contends that the PDSC mailers did not qualify for the volunteer materials
11 exemption. To qualify for the exemption, a state or local committee must pay for campaign
12 materials under certain conditions, which include: (a) the committee’s payment of campaign
13 materials is not for costs for “general public communication or political advertising,” which
14 includes “direct mail”; (b) the portion of the payment allocable to a federal candidate must be
15 paid with federal funds; (c) the committee’s payment must not be paid for from funds designated
16 for a particular federal candidate by the donor; (d) campaign materials must be “distributed by
17 volunteers and not by commercial or for-profit operations”; (e) the committee’s payment must be
18 reported as disbursements; and (g) campaign materials must not be purchased either directly by a
19 national committee or with funds donated by the national committee to the state committee.
20 11 C.F.R. §§ 100.87(a)-(e), (g) and 100.147(a)-(e), (g).² For purposes of sections 100.87(a) and
21 100.147(a), “direct mail” is defined as “any mailing(s) by a commercial vendor or any mailing(s)
22 made from commercial lists.” *Id.*

² 11 C.F.R. §§ 100.87(f) and 100.147(f) concern payments by state candidates and their campaign committees and are not relevant to the issues of these matters because there is no state candidate involvement.

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1 From the information provided in the Response and the declaration of the individual who
2 participated in the mailings, it appears that the mailers satisfied the regulatory requirements
3 necessary to qualify for the volunteer materials exemption. The Response, supplemented by the
4 declaration, states that the information for the mailers was not obtained from commercial mailing
5 lists. The complaint provides no information to the contrary. In addition, a review of the
6 PDSC's disclosure reports indicates that it used federal funds to pay for the mailers at issue.
7 Thus, it appears that the mailers satisfy sections 100.87(a), (b) and 100.147(a), (b).

8 However, with respect to the remaining requirements, two primary issues merit further
9 discussion. First, the PDSC's disclosure reports indicate that national party committees
10 transferred or contributed approximately \$992,000 to the PDSC, thus raising an issue as to
11 whether the PDSC paid for campaign materials with funds from national party committees,
12 which would place the mailers outside the purview of the volunteer materials exemption. *See*
13 11 C.F.R. §§ 100.87(g) and 100.147(g). Second, the complaint draws particular attention to
14 11 C.F.R. §§ 100.87(d) and 100.147(d), alleging that volunteer involvement in the mailers was
15 insufficient because a commercial vendor was responsible for many aspects of the mailing.

16 A. Payment of Mailers with National Party Committee Funds

17 To qualify for the volunteer materials exemption, a state committee cannot pay for
18 campaign materials with funds it received from a national party committee. *See* 11 C.F.R.
19 §§ 100.87(g) and 100.147(g). The response does not mention whether national party funds were
20 used to pay for the campaign materials, only that the Respondents fully complied with the
21 requirements for the volunteer materials exemption. *See* Response. Although the PDSC does
22 not directly mention specific disbursements in the response or declaration, disclosure reports
23 filed with the Commission show 29 disbursements totaling \$485,743.26, between July 5th and

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1 September 22, 2006, to AMS Communications, Inc. for “direct mail house printing” and the U.S.
2 Postal Service for “postage.” These expenditures are most likely for the eleven mailings at issue,
3 since they coincide with the time period referred to in the complaints.

4 The PDSC’s disclosure reports show that it received approximately \$922,000 from
5 national party committees between January and September 2006 and that it spent approximately
6 \$485,000 on the mailers between July and September 2006. However, it appears that the PDSC
7 had approximately \$799,000 in non-national party funds that it could have spent on the mailers at
8 issue. Therefore, it appears that the PDSC satisfied the requirements of §§ 100.87(g) and
9 100.147(g) in that it had sufficient federal funds from sources other than national party
10 committees to pay for the mailers.

11 B. Distribution by Volunteers

12 The complaints contend that the mailers do not satisfy the exemption requirements of
13 11 C.F.R. §§ 100.87(d) and 100.147(d) because the “attached commercially produced mail
14 pieces clearly bear commercially printed labels and postage stamps.” Complaint at 2.
15 Respondents acknowledge that the address labels and postage bear commercially printed labels
16 and postage stamps but assert that complainants “ignore the fact that volunteers can do much
17 more than just stick labels and stamps on mail pieces.” Response at 1. They further contend that
18 complainants have provided “no evidence to support their assertion that volunteers did not help
19 produce and distribute the State Party mailings.” *Id.*


20 In addition, Respondents have submitted a sworn declaration from Mr. Rafner, the
21 president of the direct mail provider who participated in the mailings undertaken on behalf of the
22 Murphy Committee. Rafner Declaration at 1. Mr. Rafner states that at least five volunteers
23 unpacked, bundled, sorted by address, bagged, tagged, plastic wrapped and loaded the mailers

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1 onto trucks specifically hired for transport to the Postal Service's Bulk Mail Center. *Id.* at 1-2.
2 The Response states that a Postal Service employee was on site to weigh and confirm the count
3 in order to expedite processing the mailers. It includes photographs of volunteers who appear to
4 be sorting, bundling, tagging and bagging Murphy mailers. Respondents asserted, and Mr.
5 Rafner concurred, that it was physically impossible for the volunteers to transport the mailers to
6 the Post Office in their own vehicles due to their sheer volume and weight (200-400 bags per
7 mailing). Response at 3; Rafner Declaration at 2.

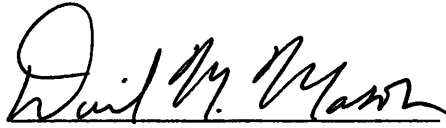
8 While delivery to the Postal Service by volunteers is a relevant factor in determining
9 whether there is sufficient volunteer involvement, it is not dispositive. Given the substantial
10 amount of volunteer involvement in distributing the mailers, including unpacking, bundling,
11 sorting, bagging, tagging, wrapping and loading the mailers, as well as presenting them to a
12 Postal Service employee on-site for weighing, etc., and in the absence of conflicting information,
13 the exemption appears to apply in these matters. Because the disbursements at issue therefore do
14 not qualify as contributions or expenditures under the Act, and since the mailers do not require
15 an "authorized by" statement because they qualify for the exemption, *see* 11 C.F.R. § 110.11(e),
16 there is no basis to open an investigation into these matters. Accordingly, the Commission finds
17 no reason to believe that Pennsylvania Democratic State Committee and Ann Bursis, in her
18 official capacity as treasurer, or Lois Murphy for Congress and Katherine A. Rowe, in her
19 official capacity as treasurer, violated the Act or Commission regulations and closes the files in
20 MURs 5824 and 5825.

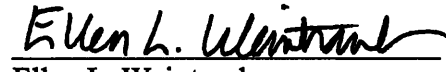
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Robert D. Lenhard
Chairman

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2 1/2/08
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David M. Mason
Vice-Chairman


Ellen L. Weintraub
Commissioner

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